

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

In the matter of the PECFA Appeal of:

Dolores Ecker
2111 Barton Ave. #11
West Bend, WI 53090

PECFA Claim # 53014-9452-33
Hearing # 01-349

FINAL DECISION ON DEPARTMENT'S MOTION TO DISMISS THE
CLAIMANT'S UNTIMELY APPEAL

The Department of Commerce has moved for the dismissal of the Claimant's appeal on the grounds that the appeal is untimely.

DISCUSSION

The Department's decision in this matter was dated and mailed on October 24, 2001. The Claimant's appeal was received by the Department on November 26, 2001--over 30 days past the date of the decision. Wisconsin Admin. Code Ch. COMM §47.53 specifies that all appeals shall be filed no later than 30 calendar days from the date of the decision appealed. As such the Department moved for dismissal. The Claimant was allowed until January 11, 2002, to respond to the Department's motion. In the response, the Claimant alleged that the appeal was placed in the U.S. Mail on November 9, 2001. The Claimant went on to state that "The appeal *should have been* placed in the United States Mail - certified mail, return receipt requested, so as to guarantee its arrival prior to November 23, 2001." This tribunal is unclear as to whether the Claimant's appeal letter was sent certified mail or merely "should have been." If it was sent certified mail, then the Claimant should have presented proof of this in its response. The Claimant did not. If it was sent first-class U.S. Mail, the Claimant also should have presented proof of this by way of an affidavit. The Claimant did not. Accordingly, this tribunal finds the Department's argument that the appeal was first received by the Department on November 26, 2001 to be persuasive. The Claimant failed to prove otherwise.

ORDER

The Department of Commerce's Motion to Dismiss is granted. The Claimant~s appeal is dismissed.

Dated and mailed this 14th day of January 2002.

BY Gretchen Mrozinski
Administrative Law Judge
Madison UI Hearing Office
801 Aberg Ave, Suite A
P.O. Box 7975
Madison, WI 53707-7975

Mailed to:

Dolores Ecker
2111 Barton Avenue #11
West Bend, WI 53090

James P. Burnett
Lutz, Burnett, McDermott, Jahn
P.O. Box 146
Chilton, WI 53014-0146

John A. Kisiel
Department of Commerce
P.O. Box 7838
Madison, WI 53707-7838